

Order

Entered: April 28, 2004

**Michigan Supreme Court
Lansing, Michigan**

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2004-04

Administrative Order No. 2004-2

Approval of the Adoption of Concurrent Jurisdiction
Plans for Barry, Berrien, Isabella, Lake, and Washtenaw
Counties, and for the 46th Circuit Consisting of
Crawford, Kalkaska, and Otsego Counties

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of concurrent jurisdiction plans for the following trial courts effective August 1, 2004:

BARRY COUNTY

5th Circuit Court
56B District Court
Barry County Probate Court

BERRIEN COUNTY

2nd Circuit Court
5th District Court
Berrien County Probate Court

ISABELLA COUNTY

21st Circuit Court
76th District Court
Isabella County Probate Court

LAKE COUNTY

51st Circuit Court
79th District Court
Lake County Probate Court

WASHTENAW COUNTY

22nd Circuit Court

14A, 14B, & 15th District Courts

Washtenaw County Probate Court

CRAWFORD, KALKASKA, AND OTSEGO COUNTIES

46th Circuit Court

87th District Court

Crawford County Probate Court

Kalkaska County Probate Court

Otsego County Probate Court

The plans shall remain on file with the state court administrator.

Amendments to concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

The Court also rescinds Administrative Order Nos. 1993-3, 1996-1, 1996-2, 1996-5, 1996-6, 1996-7, 1996-9, and 1997-12, effective August 1, 2004.

Markman, J. (*concurring*). On March 7, 2002, this Court wrote to the Speaker of the House, the Senate Majority Leader, and the Governor, and recommended the enactment of legislation “that would permit, consistent with the constitution, concurrent jurisdiction among the trial courts on a local option basis.”¹ In light of this correspondence, I wrote separately to these same persons, setting forth a series of constitutional inquiries that I thought would be helpful to the Legislature and the Governor in evaluating court reform proposals, including the proposal of this Court, and in determining whether such proposals were “consistent with the constitution.”²

¹ In addition, a representative of this Court testified before the House of Representatives and the Senate in support of such legislation.

² The following are several of the questions that I posed:

(1) Whether creating a unified or undivided trial court is consistent with Const 1963, art 6, § 1, which provides that the judicial power shall be “divided” into a circuit court and a probate court?

When the House of Representatives subsequently enacted 2002 PA 678, a proposal restructuring the courts of this state, it apparently did so in light of at least some constitutional reservation because the House simultaneously requested an advisory opinion from this Court concerning the constitutionality of this enactment. Const 1963, art 3, § 8. Over my dissent, this Court denied the House of Representatives' request without explanation. *In re 2002 PA 678*, 468 Mich 1213 (2003).

Having first recommended a course of action to the Legislature, and then denied the House of Representatives' request for an advisory opinion on the constitutionality of legislation enacted in response to this recommendation, this Court is now being asked to approve court reorganization plans adopted pursuant to this legislation. Because I see nothing inconsistent between this legislation and these reorganization plans, I concur in their approval. However, I reiterate what I stated in my dissent in *In re 2002 PA 678*, *supra* at 1216, "Before the highest court of this state exercises this newly authorized power [to approve court reorganization plans], it would be especially prudent for it first

(2) Whether creating a unified or undivided trial court with general jurisdiction by combining the circuit court with the probate court is consistent with Const 1963, art 6, §§ 1, 15, which provide that the circuit court has general jurisdiction while the probate court has limited jurisdiction?

(3) Whether allowing the probate court to combine with the circuit court to create one unified or undivided trial court is consistent with Const 1963, art 6, § 15, which provides that each county in this state shall have a "probate court"?

(4) Whether creating subdivisions of the circuit court with only limited jurisdiction is consistent with Const 1963, art 6, § 1, which provides that the circuit court shall have general jurisdiction?

(5) Whether there are limits to the extent to which a probate court can be deprived of original jurisdiction under the "except as otherwise provided by law" language of Const 1963, art 6, § 15 and yet remain a "probate court" within the contemplation of Const 1963, art 6, § 15?

(6) Whether a probate court that has been combined into a unified or undivided trial court with general jurisdiction is properly characterized as a "probate court" for purposes of Const 1963, art 6?

(7) Whether there is some provision of Const 1963 that is implicated where the people elect to a particular judicial office a person who proceeds upon election to carry out the duties and responsibilities of a distinct judicial office?

(8) Whether creating different court structures in different counties raises "equal protection" considerations under Const 1963, art 1, § 2?

to evaluate whether it is exercising a power that is compatible with the constitution . . .” I continue to hold this view, and to believe that we erred in failing to grant the House of Representatives’ request for an advisory opinion on the constitutionality of 2002 PA 678.

As this Court is increasingly called upon to approve court reorganization plans, and as our imprimatur is increasingly placed upon such plans, as it is today, it will prove increasingly difficult for us to evaluate the constitutionality of 2002 PA 678 with the requisite detachment. The more this Court becomes a participant in the process of court reorganization, the more difficult it will become for us to resolve the constitutional issues inherent in the transformation of Michigan's judicial system effected by 2002 PA 678.

It is my purpose neither to suggest that 2002 PA 678 is poorly advised nor that it is constitutionally infirm. It is merely to suggest that this Court erred in failing to address the constitutional concerns of the House of Representatives at a time when such concerns could have been addressed before this Court itself became a participant in the process of court reorganization. Rather than “demonstrating comity with the people’s representatives in the Legislature,” *id.* at 1216, we did nothing and thereby left “critical constitutional questions in limbo.” *Id.* at 1215. This Court can be assured, just as it could have been assured at the moment of enactment of 2002 PA 678, that constitutional challenges to this legislation will be forthcoming. Rather than resolving these challenges in a timely and orderly fashion, we have unwisely postponed their resolution and assured ourselves that the actions of this Court itself will be implicated in these challenges.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 28, 2004

Corbin R. Davis

Clerk